

Honorable Judge Benjamin Settle

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

CLYDE RAY SPENCER,

Plaintiff,

v.

FORMER DEPUTY PROSECUTING
ATTORNEY FOR CLARK COUNTY JAMES
M. PETERS, DETECTIVE SHARON KRAUSE,
and SERGEANT MICHAEL DAVIDSON,

Defendants.

No. C11-5424BHS

DECLARATION OF KATHLEEN
T. ZELLNER IN SUPPORT OF
PLAINTIFF'S REPLY IN
SUPPORT OF MOTION TO
STRIKE RULE 26(a)(2) REPORT
OF REBECCA ROE AND TO BAR
TESTIMONY

**NOTE ON MOTION
CALENDAR:
Friday, December 7, 2012**

PURSUANT TO 28 U.S.C. § 1746, Kathleen T. Zellner declares as follows:

1. I am competent to testify in all respects, and make this declaration from personal knowledge. I am the attorney of record for Plaintiff Clyde Ray Spencer in the above-entitled action.

2. Attached hereto as Exhibit A is a true and correct copy of excerpts from the deposition of James Peters taken under oath November 8, 2012, consisting of the cover page and pages 107 and 134.

DECLARATION OF KATHLEEN T. ZELLNER IN SUPPORT
OF PLAINTIFF'S REPLY IN SUPPORT OF MOTION TO
STRIKE RULE 26(a)(2) REPORT AND BAR TESTIMONY
(C11-5424BHS) — 1

Kathleen T. Zellner & Associates, P.C.
LAW OFFICES
1901 Butterfield Road
Suite 650
Downers Grove, Illinois 60515
630.955.1212 main · 630.955.1111 fax

1
2 I declare under penalty of perjury that the foregoing is true and correct.

3 DATED this 7th day of December, 2012 in Downers Grove, Illinois

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5 /s/ Kathleen T. Zellner
6 Kathleen T. Zellner
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DECLARATION OF KATHLEEN T. ZELLNER IN SUPPORT
OF PLAINTIFF'S REPLY IN SUPPORT OF MOTION TO
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1901 Butterfield Road
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630.955.1212 main • 630.955.1111 fax

DECLARATION OF SERVICE

I hereby certify that on December 7, 2012, I caused the foregoing to be electronically filed with the Clerk of the Court using the CM/ECF System, which will send notification of such filing to the attorneys of record as follows:

Patricia Campbell Fetterly Daniel J. Judge Robert M. McKenna Assistant Attorney General Torts Division PO Box 40126 Olympia, WA 98504-0116 Email: patriciaf1@atg.wa.gov Attorneys for Defendant James M. Peters	
Guy Bogdanoich Law, Lyman, Daniel, Kamerrer & Bogdanovich, P.S. P.O. Box 11880 Olympia, WA 98508-1880 Email: gbogdanovich@lldkb.com Attorney for Defendant Sharon Krause	Jeffrey A. O. Freimund Freimund Jackson Tardif & Benedict Garratt, PLLC 711 Capitol Way South, Suite 602 Olympia, WA 98502 Email: jeffF@fjtlaw.com Attorneys for Defendant Michael Davidson

/s/ Kathleen T. Zellner

Kathleen T. Zellner & Associates, P.C.

Admitted *pro hac vice*

1901 Butterfield Road

Suite 650

Downers Grove, Illinois 60515

Phone: (630) 955-1212

Fax: (630) 955-1111

kathleen.zellner@gmail.com

Attorney for Plaintiffs

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 OF PLAINTIFF'S REPLY IN SUPPORT OF MOTION TO
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 (C11-5424BHS) — 3

Kathleen T. Zellner & Associates, P.C.
 LAW OFFICES
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EXHIBIT A

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT TACOMA

CLYDE RAY SPENCER, MATTHEW)
RAY SPENCER, and KATHRYN E.)
TETZ,)

Plaintiffs,)

vs.)

NO. 3:11-cb-05424-BHS

FORMER PROSECUTING ATTORNEY)
FOR CLARK COUNTY JAMES M.)
PETERS, DETECTIVE SHARON)
KRAUSE, SERGEANT MICHAEL)
DAVIDSON, CLARK COUNTY)
PROSECUTOR'S OFFICE, CLARK)
COUNTY SHERIFF'S OFFICE, THE)
COUNTY OF CLARK and JOHN DOES)
ONE THROUGH TEN,)

Defendants.)

DEPOSITION UPON ORAL EXAMINATION OF JAMES M. PETERS

Thursday, November 8, 2012
Olympia, Washington

JOHNSON (James M. Peters, 11/8/12)

107

1 A Well, I recall when the reports first came in, I quickly
2 reviewed them. I made my own assessment of what I would do
3 if the ultimate decision were mine, which of course it was
4 not. I spoke with him, told him my opinion, suggested to
5 him that because of the sensitive nature of the case that
6 he might want to refer it to outside counsel for review
7 because my recommendation was at that point going to be I
8 didn't think we could prove the case.

9 Q I'm sorry. What was that you just said?

10 A I said my recommendation was going to be that I didn't
11 think we could prove the case. I thought he did it, I
12 thought there was probable cause, but I thought there were
13 proof issues.

14 And I suggested that he refer it to Becky Roe, whom I
15 knew. I knew from her teaching at our prosecutors'
16 conferences and because she was the head of the Sexual
17 Assault Center. And based on that recommendation while I
18 was in the first-degree murder trial on or about
19 November 12 Art Curtis referred the case to Becky Roe, and
20 it was as a result of that that she wrote her
21 recommendation of November 27. So from the very beginning
22 when the case first came in, Art Curtis was actively
23 involved with it.

24 Q Can you give me the date of what you just described, all
25 those things? What time period are we talking about?

JOHNSON (James M. Peters, 11/8/12)

134

1 cleared, and her brother said she made up stories; is that
2 correct?

3 A That's obviously a multiple, compound question. My -- I
4 declined or, excuse me, I expressed my personal belief at
5 the time that we would have difficulty proving the case,
6 and then in the context of all the other things that were
7 on my plate at that time, and our "You file it, you try it"
8 rule, I didn't want to try this case. So my recommendation
9 was not to pursue it.

10 Q Because it was weak, right?

11 A It was definitely weak.

12 Q All right. Now, what did you do on the case with regard to
13 the case between November 27, 1984, and December 11 of
14 1984?

15 A Nothing. I was very busy with another -- with something
16 else.

17 Q When was that meeting with Karen Stone? I guess you said
18 maybe that was Art Curtis, but just to mention, a
19 prosecutor spoke with Sharon Krause, and you said you
20 weren't sure if that was Art Curtis or yourself. Has
21 anything refreshed your recollection as to whether you had
22 that meeting with Sharon Krause about Karen Stone?

23 A I think -- your question assumes something that may not be
24 accurate. You're assuming there was a meeting. I would --
25 more likely --